

**Management and Training Corporation and Local  
3265, United Brotherhood of Carpenters and  
Joiners of America, Petitioner. Case 10-RC-  
12520**

December 16, 1982

**DECISION ON REVIEW AND  
DIRECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Michael L. Gould of the National Labor Relations Board. On November 10, 1981, the Acting Regional Director for Region 10 issued a Decision and Direction of Election. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review of the Acting Regional Director's decision on the basis, *inter alia*, that the Acting Regional Director's decision on certain substantial factual issues is erroneous and that there are compelling reasons for reconsideration of the Board's policy, enunciated in *The Singer Company, Education Division, Career Systems, Detroit Job Corps Center*, 240 NLRB 965 (1979), of asserting jurisdiction over Job Corps center contractors.

On December 11, 1981, the Board granted the Employer's request for review.<sup>1</sup>

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds they are free from prejudicial error. They are hereby affirmed.

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's brief in support of its request for review, and hereby adopts the Acting Regional Director's findings and conclusions.<sup>2</sup>

<sup>1</sup> The Employer's motions for consolidation and for stay of election were denied. The election has been conducted and the ballots impounded.

<sup>2</sup> The Acting Regional Director's discussion of the Board's jurisdiction over the Employer, with which we agree, is attached as an appendix.

Contrary to our dissenting colleagues, we continue to adhere to the principles set forth by the Board in *The Singer Company, supra*. As indicated by the Acting Regional Director in his decision, we do not find that lack of hiring authority would be determinative of whether or not an employer had sufficient authority to bargain in good faith. Neither are we persuaded by the degree of contact between the Employer and the United States Department of Labor (DOL) representatives regarding the operation of the center since the issue here is not the means by which the DOL insures compliance with the contract and the attendant rules and regulations related to the operation of Job Corps centers, but the control the Employer has over its employees and their wages, hours, and other terms and conditions of employment. We agree with the Acting Regional Director that the Employer has retained sufficient control over these labor relations matters to allow bargaining in good faith with the Petitioner should it be certified as the collective-bargaining agent.

**DIRECTION**

The Regional Director for Region 10 is hereby directed to open and count the impounded ballots to issue a tally of ballots, and to take further appropriate action in accord with this Decision and the National Labor Relations Board Rules and Regulations, Series 8, as amended.

**CHAIRMAN VAN DE WATER and MEMBER HUNTER, dissenting:**

Contrary to our colleagues, we would not assert jurisdiction over the Employer, Management and Training Corporation. As we stated in our dissent in *Teledyne Economic Development Co.*,<sup>3</sup> we would not assert jurisdiction over Job Corps centers such as that operated by the Employer herein inasmuch as the facts included in the Acting Regional Director's decision indicate that the United States Department of Labor (DOL) controls and limits the Employer's labor relations policies and practices to such an extent that the Employer is precluded from bargaining in good faith over wages, hours, and other terms and conditions of employment and shares the exemption of the DOL from the Board's jurisdiction. The record in this case goes even further than that in *Teledyne Economic Development Co., supra*, mentioned above, in that it is clear that certain employees in the unit here will be subject to pre-hire approval by the DOL. Furthermore, the record also shows that DOL representatives visit the center every month and are in telephone contact for as much as 4 or 5 hours per day, "talking about nuts and bolts," and how to operate the center. Accordingly, we do not find it appropriate to assert jurisdiction over Management and Training Corporation.

<sup>3</sup> 265 NLRB No. 153 (1982). See also *Teledyne Economic Development Company*, 223 NLRB 1040 (1976), and the dissent in *The Singer Company, Education Division, Career Systems, Detroit Job Corps Center*, 240 NLRB 965 (1979), which overruled the earlier *Teledyne* case.

**APPENDIX**

The Employer is a Delaware corporation with an office and place of business located at Albany, Georgia, where it operates a Job Corps Center. The Employer during the past calendar year, received in excess of \$250,000 of funding from the Department of Labor at the Albany, Georgia facility and purchased goods valued in excess of \$50,000 directly from suppliers located outside the State of Georgia. Under its contract with the Department of Labor (herein called DOL), the Employer provides vocational academic training for underemployed men and women between the ages of 16 and 21.

In its brief, Employer contends that assertion of jurisdiction by the National Labor Relations Board would be inappropriate because the substantial control exerted by

the Department of Labor over labor relations at the Albany, Georgia facility would preclude meaningful bargaining. The Employer cites *Teledyne Economic Development Co.*, 223 NLRB 1040 (1976), in support of its contention. There, the Board declined to assert jurisdiction in a case almost identical to that presented herein. However, the position adopted in *Teledyne* was overruled by the Board in *Singer Co., Education Division, Career Systems, Detroit Job Corps Center*, 240 NLRB 965 (1979). In *Singer*, the Board articulated the standard applicable to determine whether to assert jurisdiction over a government contractor. The test is whether the employer has sufficient control over the employment conditions of its employees to enable it to bargain with a labor organization as their representative. Subject to the broad outlines of its contract with the Department of Labor, the Employer is free to promote, demote and transfer employees so long as it operates within the parameters established by DOL. The Employer must obtain DOL approval before hiring any employee whose salary is to equal or exceed \$15,000 per annum. Employer contends that because a number of the employees in the unit sought are subject to this requirement *Singer* is inapposite. In *Singer*, and subsequent decisions applying the *Singer* test, the Board considered ability to hire as indicia of sufficient control. Nowhere in *Singer* or in any of its progeny does

the Board adopt the position that lack of hiring authority would be determinative of whether or not an Employer was vested with sufficient authority over the employment conditions of its employees to enable it to bargain with a labor organization as their representative. *Montgomery County Opportunity Board*, 249 NLRB 880 (1980). The Employer is free to assign employees to shifts within its discretion so long as it meets the manning requirements of the contract. The Employer has a bidding procedure for job openings that become available, and employees in the unit sought are subject to a grievance procedure in which the Employer makes the final decision on the grievance. Subject to budgetary limitations contained in the contract, the Employer is free to grant wage increases as long as no employee receives an increase of more than 9.9 percent over his or her previous salary. Any raise in excess of 9.9 percent must be approved by DOL. The Employer, within broad parameters, determines the day-to-day working conditions of its employees. Accordingly, I conclude that the Employer has sufficient control over its employees and their working conditions to permit it to engage in collective bargaining concerning terms and conditions of employment with an organization representing its employees. Thus it will effectuate the purposes of the Act to assert jurisdiction herein.